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By: Anne Penachio (A Member of the Firm)

HEARING DATE & TIME:
May 23, 2017 at 10:00 AM

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---X

In re

AHMAD SALEHZADEH,

Debtor.

---X

Chapter 11

Case No. 14-22666-RDD

NOTICE OF HEARING ON THE DEBTOR'S APPLICATION FOR AN ORDER (I) APPROVING PURSUANT TO 11 U.S.C. § 363(b), (f) THE SALE OF HIS RIGHT, TITLE AND INTEREST IN REAL PROPERTY LOCATED AT 312 MAIN STREET, WHITE PLAINS, NEW YORK FREE AND CLEAR OF ALL CLAIMS; (II) AUTHORIZING PAYMENT OF A PORTION OF THE SALE PROCEEDS; (III) APPROVING THE EMPLOYMENT *NUNC PRO TUNC* OF AND THE PAYMENT TO COLDWELL BANKER RESIDENTIAL BROKERAGE AS THE BROKER USED FOR THE SALE OF THAT REAL PROPERTY; AND (IV) GRANTING SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER

PLEASE TAKE NOTICE that a hearing on the application of the above-referenced debtor (the "Debtor") for approval of (i) the sale of his right, title and interest in certain real property (in the form of Condominium Apartments and the rights appurtenant thereto) located at 312 Main Street, White Plains, New York free and clear of all claims pursuant to 11 U.S.C. § 363(b), (f); (ii) authorizing payment of a portion of the sale proceeds; (iii) approving the employment *nunc pro tunc* of and the payment to Coldwell Banker Residential Brokerage as the broker used for the sale of those Condominium shares; and (iv) granting such other and further relief as may be just and proper will be held before Robert D. Drain, United States Bankruptcy Judge, in his Courtroom in the Charles L. Brieant, Jr. Federal Courthouse, 300 Quarropas Street, White Plains, New York 10601 on May 23, 2017 at 10:00 AM or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE, that the terms of the sales are fully set forth in detail in the application and consist of the following material terms:

(a) Each sale will be made of the Debtor's interest in a condominium unit with all rights appurtenant thereto located at 312 Main Street, White Plains, New York. Each sale will be to a third-party buyer. Each contract of sale is attached as an Exhibit to the Application.

(b) Each sale is "as is" and not subject to a financing contingency, satisfactory title report, or the approval by the Court and any third-party.

(c) The purchase price will be paid in cash or official bank check and some proceeds will be used to remove any liens on the respective assets at the Closings.

(d) Usual and customary closing costs will also be paid.

(e) The apartments to be transferred and the proposed purchase prices are:

(i) Apartment 3C, 312 Main Street, White Plains, NY: Sale price: $205,000.

(ii) Apartment 5C, 312 Main Street, White Plains, NY: Sale price: $205,000.

PLEASE TAKE FURTHER NOTICE that the Assets will be transferred free and clear of all liens, claims and encumbrances.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the application must comply with applicable law and be served upon and received by the undersigned, with a copy to the Bankruptcy Judge and the Office of the United States Trustee (U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014).

PLEASE TAKE FURTHER NOTICE that a copy of the underlying application with exhibits is available from the undersigned and will be provided on request or from the Bankruptcy Court website, ecf.nysb.uscourts.gov/.

PLEASE TAKE FURTHER NOTICE that, unless objections are interposed, the relief sought in the application may be granted.

Dated: White Plains, New York
April 26, 2017

PENACHIO MALARA, LLP

By: /s/ Anne Penachio
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By: Anne Penachio (A Member of the Firm)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
---X
In re

AHMAD SALEHZADEH,

Debtor.
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Chapter 11

Case No. 14-22666-RDD

THE DEBTOR'S APPLICATION FOR AN ORDER (I) APPROVING PURSUANT TO 11 U.S.C. § 363(b), (f) THE SALE OF HIS RIGHT, TITLE AND INTEREST IN TWO CONDOMINIUM APARTMENTS LOCATED AT 312 MAIN STREET, WHITE PLAINS, NEW YORK FREE AND CLEAR OF ALL CLAIMS; (II) AUTHORIZING PAYMENT OF A PORTION OF THE SALE PROCEEDS; AND (III) GRANTING SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

AHMAD SALEHZADEH, the debtor herein (the "Debtor"), by and through his counsel, **PENACHIO MALARA, LLP**, in support of his application pursuant to, *inter alia*, Section 363 of the Bankruptcy Code for an order (i) permitting the sale of two condominium apartments, and all rights appurtenant thereto, located at 312 Main Street, White Plains, NY 10601, namely (1) Apt. 3C and (2) Apt. 5C (together the "Condo Apartments") pursuant to the terms of two contracts of sale, (Exhs. A and B, respectively), (ii) and (iii) granting such other relief as the Court deems just and proper.

I. BACKGROUND

1. On or about May 14, 2014, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "Code"), with the Clerk of this Court and the case was referred to the Bankruptcy Judge herein. This Application concerns the sale of certain of his assets to obtain and contribute cash to his Bankruptcy Estate.

2. Since the filing, the Debtor has remained in control and management of his financial affairs, as a debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.

3. No Trustee or examiner has been appointed.

4. The Debtor does not qualify for relief under Chapter 13 of the Code because his liabilities exceed the statutory limitations imposed by 11 U.S.C. § 109(e).

1. The Debtor's Assets

5. The Debtor's assets other than his residence which is described below consist chiefly of interests in various Subway franchises and six apartments in White Plains, including the two Condo Apartments that are the subject of this Application. The Debtor's financial reversals were caused by a combination of factors, most notably setbacks in his business, tax issues based upon an audit and the general downturn in the economy.

6. The Debtor's only other significant asset is his home in Greenwich, Connecticut (the "Home") where he resides with his extended family. The Debtor has entered into a loan modification with Nationstar Mortgage LLC to reduce the burden of his monthly mortgage-payments, which the Court approved on November 14, 2016, (ECF No. 133).

7. The Debtor is submitting an amended plan of reorganization, (the "Plan"), the disclosure statement for which is to be submitted so as to be heard by the Court on the same day as

this Application.[1] The Plan is proposed jointly by the Debtor and the five of his corporations that have filed their own bankruptcy petitions and is predicated upon the sale of all six of the Apartments and of each of the five Subway franchisees. As to the Condo Apartments, the Plan assumes that they are sold and the net proceeds of sale are included in the Debtor's Estate before it is consummated.

8. The Debtor is making a separate application made returnable as the same day as this Application for the Court's approval of his sale of three other apartments (in the form of shares in a co-operative association), at 10 Franklin Avenue, White Plains.

2. The Sale of the Condo Apartments

9. The Debtor owns the two Condo Apartments at 312 Main Street in White Plains, New York, a building known as "The Wellington". Neither the Debtor nor any of his family members occupies either of the Condo Apartments. The Condo Apartments were purchased as investments.

10. The Condo Apartments consist of the following two units at 312 Main Street, White Plains, New York:

(a) Apartment 3C ("Apt. 3C"), is a two-bedroom, one-bathroom condominium apartment. There is no mortgage-lien on this Apartment. Sale price: $205,000. The buyer is Amir Hanna. The Debtor has no relationship with Mr. Hanna except with respect to the purchase agreement for Apt. 3C. A copy of the contract-of-sale is attached as Exhibit A.

(b) Apartment 5C ("Apt. 5C"), is also a two-bedroom, one-bathroom condominium apartment. Sale price: $205,000. The buyer is Akrim Wassef. The Debtor has no relationship

[1] The original plan was submitted as ECF No. 97, with the proposed disclosure statement as ECF No. 96 (both filed on August 11, 2015). These filings will be superseded by the amended plan, which is referred to herein simply as the "Plan."

with Mr. Wassef except with respect to the purchase agreement for Apt. 5C. A copy of the contract-of-sale is attached as Exhibit B. JP Mortgage Chase ("Chase") holds a mortgage on Apt. 5C with a principal balance due of approximately $120,000.00, which will be paid off with accrued interest through the date of Closing at the Closing.

11. The proposed sales are summarized in the following table:

312 Main Street, White Plains (the Wellington)			
Apt.	Sale Price	Mortgage	Exh.
3C	$ 205,000	0	A
5C	$ 205,000	$120,000	B

12. Pursuant to Sections 541 of the Code, the Condo Apartments constitute assets of the Debtor's bankruptcy Estate that are subject to the administration of this Court.

II. RELIEF REQUESTED

13. By this application, the Debtor seeks an order from this Court (i) authorizing him to sell each of the Condo Apartments on the terms of the respective Contracts-of-Sale, (Exhs. A and B) and distribute the proceeds as indicated, and (ii) granting such other and further relief as the Court deems just and proper.

III. JURISDICTION AND STATUTORY PREDICATES FOR RELIEF

14. This Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334 and the S.D.N.Y. Amended Standing Order of Reference dated January 31, 2012 (Preska, C.J.) (General Order M-431). Venue in this District is proper pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief sought herein are Sections 105, 541 and 363 of the Code.

IV. THE SALE OF THE CONDO APARTMENTS SHOULD BE APPROVED

15. Pursuant to Section 541(a) of the Code, upon the filing of the Debtor's Chapter 11 petition, each of the Condo Apartments became property of his Estate in bankruptcy.

16. Section 363(b)(1) of the Code provides that, after notice and a hearing, a debtor-in-possession, granted as relevant the powers of a trustee, 11 U.S.C. § 1107(a), may sell property of the estate other than in the ordinary course of business.

17. The Condo Apartments were bought by the Debtor in 2005 as investments. The Debtor intends to use the proceeds of their sales to finance the Plan. The prices at which he proposes to sell them are, he believes, fair, the product of substantial efforts to get the highest price possible.[2] Under all of the circumstances, it is the Debtor's judgment that selling the Condo Apartments pursuant to the terms of the proposed sales, (Exh. A and B), are in his best interests and in the best interests of the Estate.

18. "Section 363 sales are, in essence, private transactions," and "[a] bankruptcy court reviews a proposed § 363 sale's terms only for some minimal 'good business reason.'" *In re Motors Liquidation Co.*, 829 F.3d 135, 162 (2d Cir. 2016) (quoting *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)).

19. The standard for determining whether a sale outside the ordinary course of business should be approved is whether there is a good business-reason for the sale, *In re Lionel Corp.*, 722 F.2d at 1071; *In re MF Global Inc.*, 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015) (Glenn, J.), and whether it is in the "best interests of the estate," *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989).

20. In determining whether a sale is in the best interests of the estate, the following factors (the "*Lionel* Factors") are considered: (i) the proportionate value of the asset to be sold to the estate

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[2] By separate application, he asks the Court to approve the employment of Coldwell Banker Residential Brokerage as the broker on the sale, *nunc pro tunc*, and to approve the payment to Coldwell Banker of 5% of the sales prices, as set forth in the brokerage agreement. (*See* ECF No. 116.) (*See*, Part **Error! Reference source not found.**below.)

as a whole; (ii) the effect of the proposed disposition to the debtor's plan of reorganization; (iii) which of the alternatives of use, sale or lease of the proposal envisions; (iv) the likelihood that a plan of re- organization will be confirmed in the near future; (v) the amount of time that has elapsed since the filing; (vi) the proceeds to be obtained in relationship to any valuations of the property to be sold; and (vii) whether the assets are decreasing or increasing in value. 722 F.2d at 1071.

21. The sale of these assets is essential for the consummation of any plan of reorganization. Applying the *Lionel* Factors, the Court should approve the sales:

(i) "[T]he proportionate value of the asset to the estate as a whole":

(ii) "[T]he amount of elapsed time since the filing":

(iii) "[T]he likelihood that a plan of reorganization will be proposed and confirmed in the near future": The sale of the Condo Apartments (and the other of his apartments) is the linchpin for obtaining financing for the Plan, and the Debtor (with his related companies) intend to have an amended plan presented to the Court with a proposed disclosure statement when this application is presented.

(iv) "[T]he effect of the proposed disposition on future plans of reorganization": Again, the receipt of the net sales-proceeds is essential to the Plan.

(v) "[T]he proceeds to be obtained from the disposition vis-à-vis any appraisals of the property":

(vi) "[W]hich of the alternatives of use, sale or lease the proposal envisions": Their sale is the only option with respect to the Condo Apartments.

(vii) "[W]hether the asset is increasing or decreasing in value": Because the sale of the Condo Apartments is necessary for the Plan and the Debtor believes the prices agreed to for each are the best that can reasonably be expected to be received, whether they might be low compared to what they might be in even six months is immaterial.

1. The Proceeds of the Sales

(a) All Liens on the Condo Apartments will be Extinguished at Closing

22. Section 363(f) of the Code permits a debtor to sell property of the bankruptcy estate free and clear of all liens and encumbrances, only if:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

23. Here, the sales will garner proceeds that are greater than the liens upon the respective Condo Apartments, and the proceeds will at closing be paid to pay off all lien-holders and extinguish all of their liens. Section 363(f) is therefore complied with.

(b) The Net Proceeds of Sale Will Become Part of the Estate

24. After paying off the obligations that underlie the respective liens and all customary closing-costs, including recording fees and attorney's fees, as well as the 5% brokerage commissions which are subject to Court approval, the proceeds of the sales will be cash in the Estate for distribution as provided for in the Plan.

2. **The Proposed Sale Complies with the Court's "Guidelines for the Conduct of Asset Sales"**

25. Given the foregoing, it is clear that the proposed sales comply with the applicable portions of this Court's Guidelines for the Conduct of Asset Sales:

(1) "[A] sound business reason exists for the transaction": The Condo Apartments need to be sold for the Plan to be financed.

(2) "[T]he property has been adequately marketed, the purchase price constitutes the highest or otherwise best offer and provides fair and reasonable consideration": The Debtor, directly and with the assistance of a broker, has attempted to sell the Condo Apartments for some time. The price he was offered and the terms of the sales are, in his view, the best available in the relevant market at this time.

(3) "[T]he proposed transaction is in the best interests of the debtor's estate, its creditors, and where relevant, its interest holders": The terms of the sales are the best that the Debtor believes he can receive and thus selling the Condo Apartments on those terms is in the best interest of the Estate and its creditors.

(4) "[T]he transaction has been proposed and negotiated in good faith": As noted, the sales are on terms that the Debtor has negotiated and the other parties to the transactions are third parties. The Debtor has no relationship with either of the buyers apart from the proposed transactions. There are no side deals or *quid pro quo*s between the Debtor and either buyer. The Debtor has fully disclosed all arrangements between the parties and their principals and any related companies.

(5) "[A]dequate and reasonable notice has been provided": The Debtor will serve all creditors, the office of the United State Trustee, and parties who have filed notices of appearance with notice of the proposed sales in such a manner as to afford them

a reasonable opportunity to raise any objections they may have to the sales on the proposed terms.

(6) "[T]he 'free and clear' requirements of Section 363(f) of the Code, if applicable, have been met": The liens on the Condo Apartments will be extinguished at the Closings because proceeds of the sales will be used to pay-off the obligations that underlie the liens. The Apartments will be transferred free and clear of all liens.

(10) "[T]he debtor and the purchaser have entered into the transaction without collusion, in good faith, and from arm's-length bargaining positions, and neither party has engaged in any conduct that would cause or permit the agreement to be avoided under Section 363(n) of the Bankruptcy Code": The transactions have been agreed upon in an arm's-length manner. To the Debtor's knowledge, the price to be received for the sales was the result of good-faith negotiations and not of any agreement among potential bidders and thus Section 363(n) of the Code cannot be invoked to avoid any of these sales. Of course the Debtor reserves his rights to take appropriate action should he become aware of any such collusion.

V. NOTICE AND WAIVER OF MEMO OF LAW

26. Notice of the Application, which contains the salient provisions of the proposed relief, will be served, in accordance with the anticipated direction of this Court, on all parties in interest, secured creditors, all other known creditors, and their attorneys, if known, the Office of the United States Trustee and a potential buyer that expressed interest in other apartments belonging to the Debtor. It is respectfully submitted that such service is appropriate under the circumstances.

27. Because the facts and circumstances set forth herein do not present novel issues of law, it is respectfully requested that this Court waive the requirement of the filing of a memorandum of law.

WHEREFORE, it is respectfully requested that this Court grant the relief requested herein and all other relief that it deems necessary.

Dated: White Plains, New York
April 26 , 2017

PENACHIO MALARA, LLP

By: /s/ Anne Penachio
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